

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

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ORLANDO PEÑA,

COMPLAINT

Plaintiff,

-against-

RIDGE ROAD HOT BAGEL
& DELI INC., d/b/a RIDGE
ROAD HOT BAGEL,
and ROBERT A. VASS, individually

Defendants.
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Plaintiff Orlando Peña (“Peña” or “Plaintiff”), by and through his attorney, Jacob Aronauer of The Law Offices of Jacob Aronauer, complaining of Ridge Road Hot Bagel & Deli, Inc. d/b/a Ridge Road Hot Bagel, and Robert A. Vass, (“Vass”) individually (collectively referred to herein as “Defendants”), alleges the following:

PRELIMINARY STATEMENT

1. This is a civil action brought by Plaintiff to recover overtime compensation owed to him under the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq. (“FLSA”).
2. Plaintiff seeks injunctive and declaratory relief against Defendants’ unlawful actions and compensation for their failure to pay overtime wages and liquidated damages.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action under 28 U.S.C. § 1331, 29 U.S.C. §§ 216(b)(c), and 217; and 28 U.S.C. § 1337.

4. Venue is proper in this district under 28 U.S.C. § 1391(b)(c) and 28 U.S.C. § 1391(b)(2), because all or a substantial part of the events or omissions giving rise to the claims occurred herein.

PARTIES

Plaintiff Orlando Peña

5. Plaintiff Orlando Peña is and was at all times relevant hereto an individual residing in Bergen County, New Jersey.
6. Peña worked as a baker for Defendant Ridge Road Hot Bagel & Deli, Inc.
7. Peña consistently worked over 40 hours per week but was not paid the overtime premium for work performed after 40 hours.
8. At all times relevant, Peña was a covered employee within the meaning of the FLSA.

Defendant Robert A. Vass

9. Upon information and belief, Vass owns and maintains control, oversight, and the direction of Ridge Road Hot Bagel.
10. Vass is a person engaged in business in Bergen County, New Jersey, who is sued individually in his capacity as an owner, officer and/or agent of Ridge Road Hot Bagel.
11. Vass exercised sufficient control over Ridge Road Hot Bagel to be considered Plaintiff's employer under the FLSA and at all times material hereto said defendant had the authority to hire and fire employees and established and maintained policies regarding the pay practices at Ridge Road Hot Bagel.
12. Vass had substantial control over Plaintiff's working conditions and the practices alleged herein.

Defendant Ridge Road Hot Bagel & Deli, Inc.

13. Defendant Ridge Road Hot Bagel is an incorporation located at 649 Ridge Road, Lyndhurst, NJ 07071.

14. At all times relevant to this action, Defendant Vass owned Ridge Road Hot Bagel.

15. On information and belief, East Northport Bagel Cafe has (1) employees engaged in commerce or in the production of goods or materials for commerce and handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person; and (2) an annual gross volume of sales in excess of \$500,000.00.

FACTS

Plaintiff Orlando Peña's Employment with Defendants

16. Defendants employed Peña from on or about January 1, 2019 through on or about September 6, 2021.

17. Peña's duties included baking bagels and making salads.

18. Throughout Peña's employment with Defendants, Peña consistently worked more than 40 hours each week.

19. Throughout Peña's employment with Defendants, even though he was not exempt, he was not paid the proper overtime rate.

Plaintiff Orlando Peña's Work Schedule, Salary and Payment

20. Peña worked six days a week from 4:00 a.m. to 2:00 p.m.

21. Peña had either Monday or Tuesday off during any given week.

22. Throughout his employment with Defendants, Peña did not receive the proper overtime rate for work performed after 40 hours.

- 23. Rather, Peña was paid straight time for overtime.
- 24. In 2019, Peña received \$12 per hour, paid entirely in currency (cash).
- 25. In 2020, Peña received \$12 per hour, paid partly by check and partly by currency (cash).
- 26. On approximately February 1, 2021, Peña's hourly rate of pay was raised to \$12.50 per hour.

FIRST CAUSE OF ACTION
Fair Labor Standards Act-Overtime Wages
(Brought on behalf of Plaintiffs and the FLSA Collective Plaintiffs)

- 27. Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs.
- 28. Throughout the relevant time period, Plaintiff regularly worked in excess of 40 hours per week.
- 29. At all relevant times throughout Plaintiff's employment, Defendants operated under a policy of willfully failing and refusing to pay Plaintiffs and the FLSA Collective one and one-half times the regular hourly rate of pay for all work in excess of 40 hours per work week, and willfully failing to keep records required by the FLSA, even though Plaintiffs and the FLSA Collective were entitled to receive overtime payments.
- 30. At all relevant times throughout Plaintiff's employment, Defendants willfully, regularly and repeatedly failed to pay the required overtime rate of one and one-half times their regular hourly rate for all hours worked in excess of 40 hours per work week.
- 31. Defendants' decision not to pay overtime was willful.

32. Plaintiff seeks damages in the amount of his unpaid overtime compensation, liquidated damages as provided by the FLSA for overtime violations, attorney's fees and costs, and such other legal and equitable relief as this Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the entry of an order and judgment against Defendants Ridge Road Hot Bagel & Deli, Inc., and Robert A. Vass, jointly and severally, as follows:

- (a) Damages for the unpaid overtime pay due to Plaintiffs and the FLSA Collective, in an amount to be determined at the trial of the action, along with liquidated damages as provided by the FLSA;
- (b) pre-judgment and post-judgment interest;
- (c) Reasonable attorneys' fees and costs of the action;
- (d) For such other further and different relief as this Court deems just and proper.

Dated: October 20, 2021
New York, New York

THE LAW OFFICES OF JACOB ARONAUER

By: /s/ Jacob Aronauer
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Attorney for Plaintiff